IN THE HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

WRIT PETITION No. 141 OF 2003

PETITIONER

Ramkishan, aged about 40 years, S/o Shri Gopal Rajak, resident of Kashinagar, Korba Chowki, Rampur, Police Station Kotwali, Korba Dist.Korba (Chhattisgarh)

Versus

RESPONDENTS

R1. Bharat Sanchar Nigam Limited through the Chief General Manager, Mumbai.

R2. General Manager (T&D), Bharat Sanchar Nigam Limited, Bilaspur (Chhattisgarh)

R3. Divisional Engineer, Microwave Maintenance, Bharat Sanchar Nigam Limited, Bilaspur (Chhattisgarh)

R4. Sub Divisional Engineer, Microwave Maintenance, Bharat Sanchar Nigam Limited, Korba (Chhattisgarh)

P.R. No. 4376/03
Presented by Shri S. Pandey
dated 03.10.03

उपायुक्त एस.के. शुक्ला बिलासपुर (छ.ग.) 01/03 बिलासपुर तहसील कार्यालय

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

(22)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.141/03

Ramkishan

Vs.

Bharat Sanchar Nigam Limited & ors.

O R D E R

Post for: 5/11/2004.

Sd/-
Fakhruddin
Judge

(89)

HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION NO. 141 OF 2003

Ramkishan

Vs.

Bharat Sanchar Nigam Limited & Others

Shri U.N.S. Deo, Advocate and Shri Pankaj Shrivastava, Advocate, for the petitioner.

Shri V.V.S. Murthy, Advocate for the respondents.

Per Fakhruddin, J

O R D E R

Heard learned counsel for the parties.

2. This petition under Articles 226/227 of the Constitution of India has been filed by the petitioner on the ground that he has been acquitted from the criminal case and after acquittal he made various representations before the competent authorities of the respondents Bharat Sanchar Nigarm Limited but he has not been allowed by the respondents to join his duties.

3. Briefly stated the facts of the case are that the petitioner was appointed on 17-5-1985 and joined as Casual Mazdoor in the respondent department Bharat Sanchar Nigarm Limited at Korba. It is stated that the petitioner has been granted status of Temporary Status Mazdoor as per Casual Labourers (Grant of Temporary Status and Regularization) Scheme. It is

(90)

further contended that as per the service rules/guidelines, on completion of ten years of regular service he is entitled to be regularized as Regular Mazdoor. Learned counsel for the petitioner further referred to Annexure – P/1.

4. Learned counsel for the petitioner contended that the Chief General Manager (Maintenance) Western Telecom Region, Mumbai, accorded sanction for regularization of several persons who were working as Temporary Status Mazdoor. As per Annexure – R/4, 30 Temporary Status Mazdoor were regularized except the petitioner, whereas his name finds place at S.No. 29. It is also contended that even the persons junior to the petitioner have also been regularized.

5. Learned counsel for the petitioner contended that one D.R. Patel lodged a complaint against the petitioner and an offence under Sections 294, 323, 342 and 506-B of I.P.C. was registered and the petitioner was arrested by the Police, Korba. In view of this, instructions were issued by the Sub Divisional Engineer, Microwave Maintenance, Korba, vide letter dated 12-9-1996, Annexure – P/2, to the petitioner to the effect that he will not be taken on duty till the case is finalized.

6. It is also contended by learned counsel for the petitioner that the petitioner was acquitted for the offence by the Chief Judicial Magistrate, Korba, vide order dated 30-3-2001, Annexure – P/3, in criminal case No.2225/1996 (***State of Chhattisgarh vs. Ramkishan***). After the acquittal of the

petitioner, he submitted his joining on 22-5-2001, 15-6-2001, 6-8-2001, 14-9-2001, 12-12-2001 and on 3-10-2002 (Annexures – P/4, P/5, P/6 and P/7) before the respondent authorities but the petitioner was not allowed to join his duties.

7. Learned counsel for the petitioner also referred to Annexure – P/9 dated 29-9-2001, wherein it is mentioned that though the Department had received information regarding the acquittal of the petitioner but the Korba Court has not directed for reinstatement of the petitioner, therefore, the petitioner has not been reinstated. It is contended that the petitioner was orally asked not to come on duty. It is further contended that nevertheless, after the petitioner was acquitted and the acquittal order was brought to the notice of the Department, the petitioner ought to have been reinstated. It is also contended that the refusal on this ground is not sustainable.

8. Learned counsel for the petitioner relied upon the judgment of the Hon'ble Apex Court in the case of ***Union of India and others Vs. Jaipal Singh*** reported in ***2004 (1) SCC 121***, the judgment of Gujrat High Court in the case of ***Mukesh Kumar Premshankar Joshi Vs. State of Gujarat and another*** reported in ***2004 LAB.I.C. 271*** and the judgment of this Court in the case of ***Sunder Lal Dhritlahre Vs. State of Madhya Pradesh & Others (Writ Petition No.2583/2001) decided on 14-7-2004***.

9. In ***Mukesh Kumar*** (supra), Gujarat High Court has held as under:

> *"... It is required to be noted that the petitioner is acquitted and even at present, no departmental enquiry is pending against him. In that view of the matter, there is absolutely no justifiable reason for the Department not to reinstate the petitioner by revoking the suspension order. It is a matter of pity that since 2000, the petitioner is requesting the Department to give him appropriate posting order by revoking the suspension order in view of the acquittal order; yet, without any justifiable ground, suspension order is not revoked by the Department. Instead, the Deputy Secretary informed the petitioner, by letter dated 18th September, 2002 that since Criminal appeal is filed against the judgment of the Sessions Court, the petitioner is required to be kept under suspension. It is difficult to appreciate as to under which provision the Secretary has taken such view. When there is an order of acquittal, it was the duty of the Department to revoke the suspension order in view of the acquittal order. Simply because the appeal is pending is no ground to continue the petitioner under suspension especially when the suspension order itself is passed in view of the pendency of the criminal case.*
>
> *The learned advocate for the petitioner has also relied upon the decision of this Court in Special Civil Application No. 2960 of 1997, which is annexed with the compilation at page 12. This Court has also taken the view that the petitioner cannot be continued under suspension under the guise that some complaints are pending investigation. In the aforesaid case, in view of the acquittal of the petitioner, in connection with the criminal case, it was held that the petitioner therein is entitled to reinstatement irrespective of the pendency of the revision application before this Court."*

10. Shri Murthy, learned Counsel for the respondents is not in a position to dispute the factual aspect that the petitioner had a status of Temporary Status Mazdoor. In fact the department itself has filed Annexure – R/4, in which the name of the petitioner finds place at S.No.29. The position

(93)

which has been emerged is that the petitioner was working in the respondent department at the time when he was arrested for an offence punishable under Sections 294, 323, 342 and 506-B of I.P.C. as Temporary Status Mazdoor and the persons junior to the petitioner have been regularized. The petitioner has been acquitted and order of acquittal has been passed. Under the circumstances, the petitioner is entitled to be taken back in service. The removal is set aside.

11. The petition is allowed.

12. Counsel fee as per scale, if certified.

Sd/-
Fakhruddin
Judge

Gowri